

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

CARL K. RICH, et al.

CASE NO. C-06-03361-JF

**Plaintiffs,**

**JOINT STIPULATION AND [PROPOSED]  
PROTECTIVE ORDER AS AMENDED**

V.

## HEWLETT-PACKARD COMPANY,

**Defendant.**

WHEREAS, the Parties to the above-referenced action pending before this Court have agreed to enter into a protective order to be applied to this matter;

NOW, THEREFORE, the Parties, by and through their respective counsel, having stipulated and agreed that an order pursuant to Federal Rule of Civil Procedure 26(c) is necessary to protect the confidentiality of documents and other information obtained in the course of discovery in this Action, it is hereby ORDERED THAT:

**1. SCOPE OF ORDER.** This Stipulation and Protective Order includes in its scope any documents, things and information (including all documents and tangible things as defined in Rule 34(a) of the Federal Rules of Civil Procedure or any applicable Local Rule) that are produced,

1 disclosed or filed in the above-captioned action entitled *Rich v. Hewlett-Packard Co.*, C-06-03361 JF  
 2 (the “Action”), by or on behalf of any party or non-party, voluntarily or involuntarily, whether  
 3 pursuant to formal or informal discovery requests, subpoena, deposition notice, or motion practice,  
 4 and whether revealed in a document, a deposition, a response to any type of written discovery, a  
 5 submission to the Court or otherwise (“Litigation Material”). Nothing in this Order shall obligate  
 6 any Party or non-party to produce any Litigation Material to any other party that it is not otherwise  
 7 required to produce under the Federal Rules of Civil Procedure or any applicable local rule.

8       **2. USE OF LITIGATION MATERIAL GENERALLY.** All Litigation Material  
 9 designated as or reflecting RESTRICTED INFORMATION or RESTRICTED OUTSIDE  
 10 COUNSEL ONLY INFORMATION, as defined below, shall be used solely for the purposes of  
 11 preparation, trial, and appeal of this Action, and for no other purpose, absence further order of the  
 12 Court. However, nothing herein shall prevent or in any way limit disclosure, use or dissemination of  
 13 any documents, things, or information that are in the public domain.

14       **3. DEFINITIONS.**

15           (a)     “Party” or “Parties” shall mean any or all parties to this Action.  
 16           (b)     “Producing Party” shall mean a Party or non-party on behalf of which  
 17 documents, things or information is produced, furnished, or disclosed, during the course of this  
 18 Action, in response to requests for production of documents, interrogatories, requests for admission,  
 19 depositions or any other requests for discovery pursuant to the Federal Rules of Civil Procedure, or in  
 20 the form of pleadings, briefs, motions, memoranda, testimony adduced at trial, materials introduced  
 21 into evidence or other form of information produced, furnished or disclosed by or on behalf of such a  
 22 Party or non-party.

23           (c)     “Receiving Party” shall mean any party to which documents, things or  
 24 information is produced, furnished, or disclosed, whether voluntarily or in response to a formal or  
 25 informal discovery request, subpoena, deposition notice, or court order, by any Producing Party in  
 26 this Action.

27           (d)     “RESTRICTED INFORMATION” shall mean Litigation Material which  
 28 qualifies for protection under standards developed under F.R.Civ.P. 26(c), including: (i) confidential

1 or proprietary technical or scientific information; (ii) confidential know-how; (iii) confidential,  
 2 proprietary or sensitive business or financial information; (iv) product research and development  
 3 information; (v) customer and supplier information; (vi) marketing strategies and information;  
 4 (vii) strategic business information including without limitation business plans, manufacturing  
 5 information, cost information or logistical information; (viii) any information which is not generally  
 6 known and which the Producing Party would not normally reveal to third parties or would cause third  
 7 parties to maintain in confidence; or (ix) confidential information of a non-party that the Producing  
 8 Party is bound by a separate confidentiality agreement or court order to maintain in confidence.

9 RESTRICTED INFORMATION shall not include any documents concerning information that at any  
 10 time has been produced, disclosed or made available to the public or otherwise available for public  
 11 access.

12                   (e)     “RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION” shall mean  
 13 Litigation Material which reflects or contains any of the following: (i) technical specifications;  
 14 (ii) trade secrets; (iii) confidential pricing, marketing and sales information; or (iv) any information  
 15 which affords the Producing Party an actual or potential economic advantage over others.

16                  **4. DESIGNATION OF DOCUMENTS OR OTHER LITIGATION MATERIAL.**

17                   (a)     Any Party or non-party may designate, at or prior to the time of production,  
 18 any non-public Litigation Material (and copies thereof) produced or disclosed by or on behalf of such  
 19 Party or non-party, or any portion of such material, as either:

20                   (i)     RESTRICTED INFORMATION, by placing on each page and each  
 21 thing to which the designation applies a legend substantially as follows: “RESTRICTED  
 22 INFORMATION SUBJECT TO PROTECTIVE ORDER,” “RESTRICTED INFORMATION,” or  
 23 other similar designation; or

24                   (ii)    RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION, by  
 25 placing on each page and each thing to which the designation applies a legend substantially as  
 26 follows: “RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION SUBJECT TO  
 27 PROTECTIVE ORDER,” “RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION,”

1     “OUTSIDE COUNSEL ONLY,” or other similar designation plainly indicating “Outside Counsel  
2     Only” Litigation Material.

6 (c) Mass indiscriminate, or routinized designations are prohibited. Designations  
7 that are shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to  
8 unnecessarily encumber or retard the case development process, or to impose unnecessary expenses  
9 and burdens on other parties), expose the Designating Party to sanctions.

## **5. PROCEDURE FOR OBJECTION TO DESIGNATION.**

1       objecting party, in writing, of the basis for its designation. Within ten (10) calendar days thereafter,  
 2       the parties shall confer in a good-faith effort to resolve the matter. Failing such resolution, the Party  
 3       objecting to the designation may apply to the Court for an order removing the RESTRICTED  
 4       INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION designation  
 5       from the Litigation Material in question.

6                     (c)      A Party that elects to press a challenge to a confidentiality designation after  
 7       considering the justification offered by the Producing Party may file and serve a motion under Civil  
 8       Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) that identifies the  
 9       challenged material and sets forth in detail the basis for the challenge. Each such motion must be  
 10      accompanied by a competent declaration that affirms that the movant has complied with the meet and  
 11      confer requirements imposed in the preceding paragraph and that set forth with specificity the  
 12      justification for the confidentiality designation that was given by the Producing Party in the meet and  
 13      confer dialogue.

14                     (d)      The burden of persuasion in any such challenge proceeding shall be on the  
 15      Producing Party. Until the Court rules on the challenge, all parties shall continue to afford the  
 16      material in question the level of protection to which it entitled under the Producing Party's  
 17      designation.

18                     (e)      Notwithstanding any objection to the designation of Litigation Material as  
 19      RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION,  
 20      Litigation Material designated as RESTRICTED INFORMATION or RESTRICTED OUTSIDE  
 21      COUNSEL ONLY INFORMATION shall be treated as such and shall be subject to the provisions  
 22      hereof unless and until one of the following occurs: (i) the party who designated the Litigation  
 23      Material as RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY  
 24      INFORMATION changes or removes such designation in writing; or (ii) the Court orders the  
 25      Producing Party to change or remove such designation. If Litigation Material was properly shown to  
 26      a person who would not be entitled to see it as reclassified, that person shall be advised that the  
 27      Litigation Material has not been reclassified and should be instructed not to use the Litigation  
 28      Material for any purpose other than the litigation of this Action.

1           **6. USE OF RESTRICTED INFORMATION OR RESTRICTED OUTSIDE**

2           **COUNSEL ONLY INFORMATION.** RESTRICTED INFORMATION shall not be made  
 3 available, nor shall the contents thereof be disclosed, to persons other than QUALIFIED PERSONS,  
 4 as defined in Paragraph 7 herein, and RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION  
 5 shall not be made available, nor shall the contents thereof be disclosed, to persons other than  
 6 SPECIALLY QUALIFIED PERSONS, as defined in Paragraph 8 herein, except that RESTRICTED  
 7 INFORMATION and RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION may be made  
 8 available or the contents thereof disclosed in accordance with the provisions of Paragraphs 10 and 11  
 9 herein. All RESTRICTED INFORMATION and RESTRICTED OUTSIDE COUNSEL ONLY  
 10 INFORMATION shall be carefully maintained by the Receiving Party in secure facilities and access  
 11 to such RESTRICTED INFORMATION and RESTRICTED OUTSIDE COUNSEL ONLY  
 12 INFORMATION shall be permitted only to persons having access thereto under the terms of this  
 13 Protective Order.

14           **7. QUALIFIED PERSONS.** QUALIFIED PERSONS as used herein shall include  
 15 only the following:

- 16                 (a) a Party (such as the named plaintiff);
- 17                 (b) a Receiving Party's outside litigation counsel of record as evidenced by its  
                        having executed this Agreement;
- 18                 (c) the regularly employed support personnel (such as paralegals, administrative  
                        assistants, secretaries, and clerical and administrative staff) of a Receiving Party's outside litigation  
                        counsel as necessarily incident to the litigation of this Action;
- 19                 (d) personnel at document duplication, coding, imaging, or scanning service  
                        establishments retained by, but not regularly employed by, outside litigation counsel as necessarily  
                        incident to the litigation of this Action;
- 20                 (e) Qualified Consultants and Qualified Experts, as provided in Paragraph 10;
- 21                 (f) the regularly employed support personnel (such as administrative assistants,  
                        secretaries, and clerical and administrative staff) of a Qualified Consultant and Qualified Expert as  
                        necessarily incident to the litigation of this Action; and

(g) the Court, its personnel, jurors and alternate jurors, and court reporters, stenographers, and videographers transcribing or recording testimony at depositions, hearings, or trial in this Action.

**8.     SPECIALLY QUALIFIED PERSONS.**   SPECIALLY QUALIFIED PERSONS as used herein shall include only those QUALIFIED PERSONS listed in Paragraphs 7(a), (b), (c), (e) and (g) and any persons specially qualified to receive RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION by virtue of the Producing Party having approved of the proposed Specially Qualified Person pursuant to Paragraph 11, or the Court has ruled on an application by the Receiving Party that the proposed Specially Qualified Person may receive the RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION of the Producing Party.

## **9. AGREEMENT BY QUALIFIED PERSONS AND SPECIALLY QUALIFIED PERSONS.**

(a) Except as provided in this Protective Order, RESTRICTED INFORMATION shall not be made available to any QUALIFIED PERSON, nor shall RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION be made available to any SPECIALLY QUALIFIED PERSON, unless such QUALIFIED PERSON or SPECIALLY QUALIFIED PERSON has first read this Stipulation and Protective Order and has agreed in writing (i) to be bound by the terms hereof, (ii) to maintain the confidentiality of the information and not to use or disclose the information to anyone other than as provided herein, and (iii) to utilize such information solely for the purpose of this Action (as evidenced by signing an Agreement to Abide by Protective Order, in the form set forth in Exhibit A or B hereto, as appropriate).

(b) Support personnel (such as paralegals, administrative assistants, secretaries, and clerical and administrative staff) need not sign an Agreement to Abide by Protective Order to constitute QUALIFIED PERSONS or SPECIALLY QUALIFIED PERSONS if their supervisors have done so. In addition, the assent to this Stipulation and Protective Order by counsel for a Party or non-party binds such counsel, his or her law firm, and support personnel employed by such law firm for purposes of constituting QUALIFIED PERSONS and/or SPECIALLY QUALIFIED PERSONS.

(c) The Court and other individuals set forth in Paragraph 7(g) need not sign an Agreement to Abide by Protective Order.

(d) Counsel for a Party obtaining an Agreement to Abide by Protective Order shall retain a copy of that Agreement during the course of this Action until the case involving that Counsel's client is terminated by judgment, dismissal, or settlement.

(e) In the event that any QUALIFIED PERSON or SPECIALLY QUALIFIED PERSON ceases to engage in the litigation of this Action, access by such person to RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION shall be terminated. The provisions of this Protective Order, however, shall otherwise remain in full force and effect as to such QUALIFIED PERSON or SPECIALLY QUALIFIED PERSON.

## **10. APPROVAL OF PROPOSED QUALIFIED CONSULTANTS AND QUALIFIED EXPERTS.**

(a) A consultant or expert retained by a Party shall become a Qualified Consultant or Qualified Expert, as the case may be, as to a particular Producing Party and may receive the RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION of that Producing Party only after (i) the Party first makes a written request on the Producing Party that: (A) identifies the specific RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION that the Receiving Party seeks permission to disclose to the Qualified Consultant or Qualified Expert; (B) sets forth the full name of the Qualified Consultant or Qualified Expert and the city and state of his or her primary residence; (C) attaches a copy of the proposed Qualified Consultant's or Qualified Expert's curriculum vitae; (D) identifies the proposed Qualified Consultant's or Qualified Expert's current employer(s); (E) identifies each person or entity from whom the proposed Qualified Consultant or Qualified Expert has received compensation for work in his or her areas of expertise or to whom the expert has provided professional services at any time during the preceding five years, and (F) identifies (by name and number of the case, filing date, and location of the court) any litigation in connection with which the proposed Qualified Consultant or Qualified Expert has provided any professional services during the preceding five years; (ii) the Producing Party has approved of the disclosure of RESTRICTED INFORMATION or

1 RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION to of the proposed Qualified  
 2 Consultant or Qualified Expert, or the Court has ruled on an application by the Receiving Party that  
 3 the proposed Qualified Consultant or Qualified Expert may receive RESTRICTED INFORMATION  
 4 or RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION; and (iii) the proposed Qualified  
 5 Consultant or Qualified Expert has executed an Agreement to Abide by Protective Order in the form  
 6 attached hereto as Exhibit B and (a) serves the executed Agreement on the Producing Party;

7                 (b)     A Producing Party shall have seven (7) court days from the date of facsimile or  
 8 electronic mail service of the materials and information served pursuant to Paragraphs 10(a) or this  
 9 Paragraph 10(b), to object to a proposed Qualified Consultant or Qualified Expert. Such objection  
 10 must be for good cause, stating with particularity the reasons for the objection, and must be in writing  
 11 served on all Parties. Failure to object within the period referenced in this Paragraph shall constitute  
 12 approval. If a written notice of objection is served, no RESTRICTED INFORMATION or  
 13 RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION of the Producing Party shall not be  
 14 disclosed to the proposed Qualified Consultant or Qualified Expert until the objection is resolved by  
 15 agreement or by an order of the Court.

16                 (c)     A Party that receives a timely written objection must meet and confer with the  
 17 Producing Party (through direct voice to voice dialogue) to try to resolve the matter by agreement. If  
 18 no agreement is reached, the Party seeking to make the disclosure to the Expert may file a motion as  
 19 provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) seeking  
 20 permission from the court to do so. Any such motion must describe the circumstances with  
 21 specificity, set forth in detail the reasons for which the disclosure to the Expert is reasonably  
 22 necessary, assess the risk of harm that the disclosure would entail, and suggest any additional means  
 23 that might be used to reduce that risk. In addition, any such motion must be accompanied by a  
 24 competent declaration in which the movant describes the parties' efforts to resolve the matter by  
 25 agreement (i.e., the extent and the content of the meet and confer discussions) and sets forth the  
 26 reasons advanced by the Producing Party for its refusal to approve the disclosure.

27                 (d)     The objecting Producing Party shall have the burden of demonstrating by a  
 28 preponderance of the evidence that the proposed Qualified Consultant or Qualified Expert should not

1 be permitted to receive RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL  
2 ONLY INFORMATION.

3 **11. APPROVAL OF PROPOSED SPECIALLY QUALIFIED PERSONS.**

4 (a) A person shall become a Specially Qualified Person as to a particular  
5 Producing Party and may receive RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION of  
6 that Producing Party only after the following conditions have been satisfied: (i) the proposed  
7 Specially Qualified Person has executed an Agreement to Abide by Protective Order in the form  
8 attached hereto as Exhibit A or B hereto, as appropriate; (ii) the executed Agreement and a list of any  
9 known present or former relationships or engagements between the proposed Specially Qualified  
10 Person and any Party or known competitor of a Party have been served on the Producing Party; and  
11 (iii) the Producing Party has approved of the proposed Specially Qualified Person, or the Court has  
12 ruled on an application by the Receiving Party that the proposed Specially Qualified Person may  
13 receive RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION.

14 (b) A Producing Party shall have fourteen (14) calendar days from the date of  
15 facsimile or electronic mail service of the materials and information served pursuant to  
16 Paragraphs 11(a) or this Paragraph 11(b), plus three (3) additional calendar days if service is made by  
17 mail, to object to a proposed Specially Qualified Person. Such objection must be for good cause,  
18 stating with particularity the reasons for the objection, and must be in writing served on all Parties.  
19 Failure to object within the period referenced in this Paragraph shall constitute approval. If a written  
20 notice of objection is served, no RESTRICTED INFORMATION or RESTRICTED OUTSIDE  
21 COUNSEL ONLY INFORMATION of the Producing Party shall be disclosed to the proposed  
22 Specially Qualified Person until the objection is resolved by agreement or by an order of the Court.

23 (c) The Party seeking to disclose RESTRICTED INFORMATION or  
24 RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION to the proposed Qualified Employee,  
25 Qualified Consultant, or Qualified Expert bears the burden of seeking an order of the Court. The  
26 objecting Producing Party shall have the burden of demonstrating by a preponderance of the evidence  
27 that the proposed Qualified Employee, Qualified Consultant, or Qualified Expert should not be  
28

1 permitted to receive RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL  
2 ONLY INFORMATION.

3       **12. LIMITED DISCLOSURE TO PARTIES WITH PRIOR ACCESS.** Nothing  
4 herein shall prevent the disclosure of any RESTRICTED INFORMATION or RESTRICTED  
5 OUTSIDE COUNSEL ONLY INFORMATION to any of the following:

6               (a) any current employee of the Producing Party;  
7               (b) any former employee of the Producing Party if the RESTRICTED  
8 INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION originated with,  
9 or was sent to, the former employee during the term of employment of the former employee, as  
10 evidenced by the identification of the former employee as an author, recipient, or copyee on the face  
11 of the RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY  
12 INFORMATION.

13       **13. LIMITED DISCLOSURE TO WITNESSES TESTIFYING AT TRIAL OR AT**  
14 **DEPOSITION.** RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY  
15 INFORMATION may be made available, or the contents thereof disclosed, to witnesses testifying at  
16 trial or at deposition, or who provide an affidavit or certification, only if:

17               (a) in the case of a document, it appears that the witness has previously seen or  
18 received the RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY  
19 INFORMATION contained therein, either because the document identifies the witness as an author,  
20 recipient or copyee, or because the document comes from the files of the witness

21               (b) the lawyer disclosing such RESTRICTED INFORMATION or RESTRICTED  
22 OUTSIDE COUNSEL ONLY INFORMATION has a reasonable, good-faith belief based upon the  
23 witness's testimony or the testimony of other witnesses that the witness has had previous access to  
24 the RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY  
25 INFORMATION;

26               (c) the Producing Party agrees in writing that the witness may have access to the  
27 RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION  
28 for purposes of his or her testimony at trial and/or at deposition; or

1                             (d)     the witness is employed by or affiliated with the Producing Party.

2 If the basis of the disclosure is (a) or (b) above, then immediately after the disclosure, the lawyer  
 3 disclosing such RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY  
 4 INFORMATION must make an inquiry with respect to the witness's previous access to such  
 5 information, and if it becomes apparent on such inquiry that the witness has not had previous access  
 6 to the RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY  
 7 INFORMATION, the item shall be withdrawn and no further inquiry regarding the RESTRICTED  
 8 INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION shall be  
 9 permitted. Any witness testifying at trial or at deposition or who provides an affidavit or  
 10 certification, or his or her counsel, who receives RESTRICTED INFORMATION or RESTRICTED  
 11 OUTSIDE COUNSEL ONLY INFORMATION shall not reveal or discuss the contents of that  
 12 information to or with any person who is not entitled to receive such information pursuant to this  
 13 Protective Order.

14                             **14. DESIGNATION OF DEPOSITION TESTIMONY.** A Party or non-party may  
 15 designate information disclosed during a deposition as RESTRICTED INFORMATION or  
 16 RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION by so indicating on the record at the  
 17 deposition. A Party or non-party may also designate in writing, within twenty (20) calendar days of  
 18 the receipt of the transcript (the "Designation Period"), specific pages of the transcript to be treated  
 19 as RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY  
 20 INFORMATION. Until the Designation Period has elapsed for a given transcript or portion thereof,  
 21 that transcript or such portion shall be treated as RESTRICTED INFORMATION or RESTRICTED  
 22 OUTSIDE COUNSEL ONLY INFORMATION. When information contained or incorporated in a  
 23 deposition transcript is designated as RESTRICTED INFORMATION or RESTRICTED OUTSIDE  
 24 COUNSEL ONLY INFORMATION, arrangements shall be made with the court reporter by the  
 25 Party making the designation to label the relevant pages RESTRICTED INFORMATION or  
 26 RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION, as the case may be.

27                             **15. ATTENDANCE AT DEPOSITIONS.** During depositions of any Party or non-party,  
 28 a Party or non-party claiming that information to be disclosed or upon which questions may be based

1 is RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY  
2 INFORMATION may exclude from the room any person who is not a QUALIFIED PERSON or  
3 SPECIALLY QUALIFIED PERSON, as appropriate under this Protective Order.

4 **16. FILING RESTRICTED INFORMATION AND RESTRICTED OUTSIDE**  
5 **COUNSEL ONLY INFORMATION.** Without written permission from the Producing Party, or a  
6 court order secured after appropriate notice to all interest persons, a Party may not file in the public  
7 record in this action and RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL  
8 ONLY INFORMATION. Requests by any Party to file RESTRICTED INFORMATION and  
9 RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION under seal shall be governed by  
10 Civil Local Rule 79-5.

11 **17. USE OF RESTRICTED INFORMATION OR RESTRICTED OUTSIDE**  
12 **COUNSEL ONLY INFORMATION AT TRIAL.** Nothing in this Protective Order shall prevent a  
13 Party from using any RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL  
14 ONLY INFORMATION at a hearing or at trial. The Parties may request that attendance at those  
15 portions of the hearing or trial, or access to the transcripts of those portions of the hearing or the trial,  
16 in which RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY  
17 INFORMATION is disclosed be restricted to court personnel, QUALIFIED PERSONS, and  
18 SPECIALLY QUALIFIED PERSONS, as appropriate, pursuant to this Protective Order.

19 **18. PROCEDURE FOR POST-PRODUCTION DESIGNATION.** At any time prior to  
20 the final pretrial conference in this Action, a Producing Party may seek additional protection for  
21 previously produced Litigation Material by designating such Litigation Material as RESTRICTED  
22 INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION, or changing the  
23 classification of any Litigation Material designated RESTRICTED INFORMATION or  
24 RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION, by providing written notice to the  
25 recipients of such information, provided that no such recipient shall be bound by the terms of this  
26 Protective Order, or be subject to liability for failure to comply with such terms, until receipt of such  
27 written notice. If Litigation Material was properly shown to a person who would not be entitled to  
28 see it as newly designated or redesignated, that person shall be advised that the Litigation Material

1 has been designated or redesignated as RESTRICTED INFORMATION or RESTRICTED  
 2 OUTSIDE COUNSEL ONLY INFORMATION, as the case may be, and instructed not to use the  
 3 Litigation Material for any purpose other than the litigation of this Action.

4       **19. AVAILABILITY TO NON-PARTIES.** Any non-party, whether an individual or  
 5 entity, from whom discovery is sought may obtain the protection of this Protective Order by written  
 6 request to the Party seeking such discovery.

7       **20. NOTICE TO NON-PARTIES.** Any Party issuing a subpoena to a non-party shall  
 8 enclose a copy of this Protective Order with a request that, within ten (10) calendar days, the non-  
 9 party either request the protection of this Protective Order or notify the issuing party that the non-  
 10 party does not need the protection of this Protective Order or wishes to seek different protection.

11       **21. NO WAIVER.**

12           (a) Nothing in this Protective Order shall prejudice the right of any Party to object  
 13 to the production of any document or part thereof upon any appropriate ground, including any  
 14 applicable privilege, and nothing herein shall be construed as a waiver of such right. Moreover,  
 15 nothing in this Protective Order shall prejudice the right of any Party to object to the admissibility at  
 16 trial of any Litigation Material or other evidentiary material on any appropriate ground, and nothing  
 17 herein shall be construed as a waiver of such right.

18           (b) Entering into, agreeing to and/or complying with the terms of this Protective  
 19 Order shall not (i) operate as an admission by any Party that any particular Litigation Material  
 20 contains or reflects currently valuable trade secrets or protected proprietary or commercial  
 21 information; or (ii) operate as an admission by any Party that any particular Litigation Material is, or  
 22 is not, relevant to this Action.

23       **22. PARTIES' OWN INFORMATION.** Nothing in this Protective Order shall limit any  
 24 Producing Party's use of its own documents, things or information. Nor shall anything in this  
 25 Protective Order prevent any Producing Party from disclosing its RESTRICTED INFORMATION or  
 26 RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION to any person. Such disclosures  
 27 shall not affect any designation of such information as RESTRICTED INFORMATION or  
 28 RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION pursuant to the terms of this

1 Protective Order so long as the disclosure is made in a manner which is reasonably calculated to  
 2 maintain the confidentiality of the information.

3       **23. DISCLOSURES BEYOND PROTECTIVE ORDER.** Nothing in this Protective  
 4 Order shall prevent disclosure beyond the terms of this Protective Order (i) if the Designating  
 5 Party(ies) consents to such disclosure; (ii) if the Court, after notice to all affected persons, allows  
 6 such disclosure; or (iii) if the Party to whom RESTRICTED INFORMATION or RESTRICTED  
 7 OUTSIDE COUNSEL ONLY INFORMATION has been produced thereafter becomes obligated to  
 8 disclose the information in response to a lawful subpoena or other legal process, provided that the  
 9 subpoenaed party gives prompt written notice to counsel for the Designating Party and permits  
 10 counsel for that party at least fourteen (14) calendar days from receipt of the written notice to  
 11 intervene and seek judicial protection from the enforcement of the subpoena and/or entry of an  
 12 appropriate protective order in the action in which the subpoena was issued

13       **24. INADVERTENT PRODUCTION OF PRIVILEGED LITIGATION**

14       **MATERIAL.** The inadvertent production of Litigation Material which a Party or non-party later  
 15 claims should not have been produced because of a privilege, including but not limited to the  
 16 attorney-client privilege, work-product privilege or joint defense privilege (“Inadvertently Produced  
 17 Privileged Material”) will not be deemed a waiver of any privileges. A Party or non-party may  
 18 request the return of any Inadvertently Produced Privileged Material. A request for the return of any  
 19 Inadvertently Produced Privileged Material shall identify the Litigation Material inadvertently  
 20 produced and the basis for withholding such Litigation Material from production. If a Party or non-  
 21 party requests the return, pursuant to this Paragraph, of any Inadvertently Produced Privileged  
 22 Material then in custody of another party, such party shall within five (5) business days return to the  
 23 requesting Party or non-party the Inadvertently Produced Privileged Material and destroy all copies  
 24 thereof. The party or parties returning such Inadvertently Produced Privileged Material shall not  
 25 assert as a ground for entering an order compelling production of the Inadvertently Produced  
 26 Privileged Material the fact or circumstances of the inadvertent production. The return of any  
 27 Inadvertently Produced Privileged Material shall not in any way preclude the Receiving Party from  
 28 moving the Court for an order that (i) the Litigation Material was never privileged or otherwise

1 immune from disclosure; or (ii) any applicable privilege or immunity has been waived by some act  
 2 other than the production of the Litigation Material.

3       **25. INADVERTENT DISCLOSURE OF RESTRICTED INFORMATION OR**  
 4       **RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION.**

5           (a)     If any Litigation Material that a Party or non-party intends to designate as  
 6 RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION  
 7 is inadvertently disclosed without being marked in accordance with this Protective Order, the failure  
 8 to so mark the Litigation Material shall not be deemed a waiver of its confidentiality.

9           (b)     If any Litigation Material designated as RESTRICTED INFORMATION or  
 10 RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION hereunder is disclosed, through  
 11 inadvertence or otherwise, to a person or party other than a QUALIFIED PERSON or  
 12 SPECIFICALLY QUALIFIED PERSON, as the case may be, then the party disclosing the  
 13 information shall use its best efforts to bind such person or party to the terms of this Protective Order  
 14 and (a) such person shall be informed promptly of all provisions of this Protective Order by the  
 15 disclosing party; (b) such person shall be identified immediately to the Party that designated the  
 16 Litigation Material as RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL  
 17 ONLY INFORMATION; and (c) the person to whom disclosure was made shall be requested to sign  
 18 an Agreement to Abide by Protective Order in the form of Exhibit C hereto, which signed Agreement  
 19 shall be served on the Party that designated the Litigation Material as RESTRICTED  
 20 INFORMATION or RESTRICTED OUTSIDE COUNSEL INFORMATION. Nothing in this  
 21 Paragraph shall affect the Producing Party's remedies under this Protective Order or otherwise for  
 22 such unauthorized disclosure.

23       **26. RETURN OR DESTRUCTION OF RESTRICTED INFORMATION OR**  
 24       **RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION UPON CONCLUSION OF**  
 25       **THIS ACTION.**

26           (a)     At the conclusion of this Action, each party subject to the terms of this  
 27 Protective Order shall assemble and return to each Producing Party all originals and reproductions of  
 28 any Litigation Material containing information designated as RESTRICTED INFORMATION or

1 RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION within sixty (60) days of the  
2 conclusion of this Action, including notes made therefrom or summaries thereof, in lieu of returning  
3 Litigation Materials containing information designated as RESTRICTED INFORMATION or  
4 RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION, a party may destroy all such  
5 Litigation Material within sixty (60) days of the conclusion of this Action, provided the party electing  
6 to undertake such destruction certifies to the Producing Party in writing that it has made a reasonable  
7 and good-faith effort to destroy such Litigation Material, and that all such material has been  
8 destroyed to the best of its knowledge.

## **27. SURVIVAL OF OBLIGATIONS.**

18                             (a) All the provisions of this Protective Order shall survive the conclusion of this  
19 Action, and shall continue to be binding after the conclusion of this Action unless subsequently  
20 modified by agreement among the Parties or further order of the Court.

27       **28. VIOLATIONS SANCTIONABLE.** All persons bound by this Protective Order are  
28 hereby notified that if this Protective Order is in any manner violated, the person or entity who

1 commits such violation may be subject to such sanctions as the Court on motion and after a hearing  
2 deems just.

3       **29. RELIEF FROM PROTECTIVE ORDER.** Entry of this Protective Order shall be  
4 without prejudice to the application by any Party or non-party (i) for relief from any restriction  
5 contained herein or (ii) for any order compelling or further restricting the production or use of any  
6 Litigation Material produced, furnished, or disclosed in the course of discovery in this Action. The  
7 Parties may amend or modify any provision of this Order by mutual agreement, which agreement  
8 shall be embodied in a written stipulation to be approved by the Court.

9  
10 Dated: 8/27/08



HOWARD R. LLOYD

UNITED STATES MAGISTRATE JUDGE

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1 WE HEREBY CONSENT TO THE FORM AND ENTRY OF THE ABOVE ORDER:

2 Dated: July 21, 2008

KABATECK BROWN KELLNER, LLP  
COTCHETT, PITRE & MCCARTHY  
THE GARCIA LAW FIRM  
MCNICHOLAS & MCNICHOLAS LLP

5 By: \_\_\_\_\_ /s/  
6

7 Respectfully submitted on behalf of Plaintiffs  
8 CARL K. RICH and DAVID DURAN  
9

10 GIBSON, DUNN & CRUTCHER LLP  
11

12 By: \_\_\_\_\_ /s/  
13

14 Respectfully submitted on behalf of Defendant  
15 HEWLETT-PACKARD CO.  
16

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**EXHIBIT A**

UNITED STATES DISTRICT COURT  
THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

CARL K. RICH, et al.

**Plaintiffs,**

V.

## HEWLETT-PACKARD COMPANY,

**Defendant.**

CASE NO. C-06-03361-JF

**JOINT STIPULATION AND [PROPOSED]  
PROTECTIVE ORDER**

## **AGREEMENT TO ABIDE BY PROTECTIVE ORDER**

I, \_\_\_\_\_, being duly sworn, state that:

1. My address is \_\_\_\_\_

2. My present employer is \_\_\_\_\_.

and the address of my present employment is \_\_\_\_\_

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<sup>1</sup> See, e.g., *United States v. Ladd*, 100 F.2d 720, 722 (5th Cir. 1938) (“[T]he right to a trial by jury is a fundamental right which cannot be abridged or denied.”); *State v. Johnson*, 100 N.C. 1, 10 (1870) (“The right of trial by jury is a fundamental right, which cannot be abridged or denied.”).

3. My present occupation or job description is \_\_\_\_\_

1       4. I hereby acknowledge that I have read the Stipulation and Protective Order  
2 ("PROTECTIVE ORDER") in the above-captioned action (the "Action"), that I am familiar with the  
3 terms thereof, and that I agree to be bound by the terms thereof.

4       5. I hereby acknowledge that, pursuant to the PROTECTIVE ORDER, I may receive  
5 information designated as RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL  
6 ONLY INFORMATION in this Action, and certify my understanding that such information is  
7 provided to me pursuant to the terms and restrictions of the PROTECTIVE ORDER. I agree not to  
8 reveal any RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY  
9 INFORMATION or any notes containing or reflecting such information to anyone not authorized to  
10 receive such information pursuant to the terms of the PROTECTIVE ORDER, and I agree not to use,  
11 directly or indirectly, or allow the use of any RESTRICTED INFORMATION or RESTRICTED  
12 OUTSIDE COUNSEL ONLY INFORMATION for any purpose other than a purpose directly  
13 associated with my duties in this litigation.

14       6. I understand that I am to retain all copies of the materials that I receive which have  
15 been designated as containing or reflecting RESTRICTED INFORMATION or RESTRICTED  
16 OUTSIDE COUNSEL ONLY INFORMATION in a container, cabinet, drawer, room or other safe  
17 place in a manner consistent with the PROTECTIVE ORDER. I understand that all copies of any  
18 such materials are to remain in my custody until the conclusion of this Action or the completion of  
19 my assigned duties, whereupon the copies are to be destroyed or returned to the Producing Party.  
20 Such return or destruction shall not relieve me from the obligations imposed upon me by the  
21 PROTECTIVE ORDER. I further agree to notify any support personnel (such as paralegals,  
22 administrative assistants, secretaries, and clerical and administrative staff) who are necessary to assist  
23 me of the terms of the PROTECTIVE ORDER and of their obligation not to reveal any  
24 RESTRICTED INFORMATION to anyone not authorized to receive such information pursuant to  
25 the terms of the PROTECTIVE ORDER.

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1       7. I understand that I shall be subject to the jurisdiction of the U.S. District Court for the  
2 Northern District of California in any proceeding relating to my performance under, compliance with,  
3 or violation of the PROTECTIVE ORDER.

4 Signature: \_\_\_\_\_

5 Date: \_\_\_\_\_

**EXHIBIT B**

Qualified Consultant  
or Qualified Expert

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

CARL K. RICH, et al.

Plaintiffs,

V.

## HEWLETT-PACKARD COMPANY,

Defendant.

CASE NO. C-06-03361-JF

**JOINT STIPULATION AND [PROPOSED]  
PROTECTIVE ORDER**

## **AGREEMENT TO ABIDE BY PROTECTIVE ORDER**

I, \_\_\_\_\_, being duly sworn, state that:

1. My address is \_\_\_\_\_

2. My present employer is \_\_\_\_\_,

and the address of my present employment is \_\_\_\_\_

1       3. My present occupation or job description is \_\_\_\_\_  
2 \_\_\_\_\_  
3 \_\_\_\_\_.

4       4. I have attached hereto my current curriculum vitae and, to the best of my knowledge, a  
5 complete list of any present or former relationships or engagements between myself and any Party to  
6 the above-captioned action (the "Action") or any known competitor thereof.

7       5. I hereby acknowledge that I have read the Stipulation and Protective Order  
8 ("PROTECTIVE ORDER") in this Action, that I am familiar with the terms thereof, and that I agree  
9 to be bound by the terms thereof.

10      6. I hereby acknowledge that, pursuant to the PROTECTIVE ORDER, I may receive  
11 information designated as RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL  
12 ONLY INFORMATION in this Action, and certify my understanding that such information is  
13 provided to me pursuant to the terms and restrictions of the PROTECTIVE ORDER. I agree not to  
14 reveal any RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY  
15 INFORMATION or any notes containing RESTRICTED INFORMATION or RESTRICTED  
16 OUTSIDE COUNSEL ONLY INFORMATION to anyone not authorized to receive such information  
17 pursuant to the terms of the PROTECTIVE ORDER, and I agree not to use, directly or indirectly, or  
18 allow the use of any RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL  
19 ONLY INFORMATION for any purpose other than a purpose directly associated with my duties in  
20 this litigation.

21      7. I understand that I am to retain all copies of the materials that I receive which have  
22 been designated as containing or reflecting RESTRICTED INFORMATION or RESTRICTED  
23 OUTSIDE COUNSEL ONLY INFORMATION in a container, cabinet, drawer, room or other safe  
24 place in a manner consistent with the PROTECTIVE ORDER. I understand that all copies of any  
25 such materials are to remain in my custody until the conclusion of this Action or the completion of  
26 my assigned duties, whereupon the copies are to be destroyed or returned to the Producing Party.  
27 Such return or destruction shall not relieve me from the obligations imposed upon me by the  
28 PROTECTIVE ORDER. I further agree to notify any support personnel (such as paralegals,

1 administrative assistants, secretaries, clerical and administrative staff) who are necessary to assist me  
2 of the terms of the PROTECTIVE ORDER and of their obligation not to reveal any RESTRICTED  
3 INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION to anyone not  
4 authorized to receive such information pursuant to the terms of the PROTECTIVE ORDER.

5       8. I understand that I shall be subject to the jurisdiction of the U.S. District Court for the  
6 Northern District of California in any proceeding relating to my performance under, compliance with,  
7 or violation of the PROTECTIVE ORDER.

8 Signature: \_\_\_\_\_

9 Date: \_\_\_\_\_

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**EXHIBIT C**  
**Non-Party**

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

## SAN JOSE DIVISION

CARL K. RICH, et al.

CASE NO. C-06-03361-JF

**Plaintiffs,**

**JOINT STIPULATION AND [PROPOSED]  
PROTECTIVE ORDER**

V.

## HEWLETT-PACKARD COMPANY,

Defendant.

## **AGREEMENT TO ABIDE BY PROTECTIVE ORDER**

I, \_\_\_\_\_, being duly sworn, state that:

1. My address is \_\_\_\_\_

2. My present employer is \_\_\_\_\_.

and the address of my present employment is \_\_\_\_\_

1       3. My present occupation or job description is \_\_\_\_\_  
2 \_\_\_\_\_  
3 \_\_\_\_\_.

4       4. I represent non-party \_\_\_\_\_  
5 \_\_\_\_\_.

6       5. I hereby acknowledge that I have read the Stipulation and Protective Order  
7 ("PROTECTIVE ORDER") in this Action, that I am familiar with the terms thereof, and that I agree  
8 to be bound by the terms thereof.

9       6. I hereby acknowledge that, pursuant to the PROTECTIVE ORDER, I may receive  
10 information designated as RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL  
11 ONLY INFORMATION in this Action, and certify my understanding that such information is  
12 provided to me pursuant to the terms and restrictions of the PROTECTIVE ORDER. I agree not to  
13 reveal any RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY  
14 INFORMATION or any notes containing RESTRICTED INFORMATION or RESTRICTED  
15 OUTSIDE COUNSEL ONLY INFORMATION to anyone not authorized to receive such information  
16 pursuant to the terms of the PROTECTIVE ORDER, and I agree not to use, directly or indirectly, or  
17 allow the use of any RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL  
18 ONLY INFORMATION for any purpose other than a purpose directly associated with my duties in  
19 this litigation.

20       7. I understand that I am to retain all copies of the materials that I receive which have  
21 been designated as containing or reflecting RESTRICTED INFORMATION or RESTRICTED  
22 OUTSIDE COUNSEL ONLY INFORMATION in a container, cabinet, drawer, room or other safe  
23 place in a manner consistent with the PROTECTIVE ORDER. I understand that all copies of any  
24 such materials are to remain in my custody until the conclusion of this Action or the completion of  
25 my assigned duties, whereupon the copies are to be destroyed or returned to the Producing Party.  
26 Such return or destruction shall not relieve me from the obligations imposed upon me by the  
27 PROTECTIVE ORDER. I further agree to notify any support personnel (such as paralegals,  
28 administrative assistants, secretaries, clerical and administrative staff) who are necessary to assist me

1 of the terms of the PROTECTIVE ORDER and of their obligation not to reveal any RESTRICTED  
2 INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION to anyone not  
3 authorized to receive such information pursuant to the terms of the PROTECTIVE ORDER.

4       8. I understand that I shall be subject to the jurisdiction of the U.S. District Court for the  
5 Northern District of California in any proceeding relating to my performance under, compliance with,  
6 or violation of the PROTECTIVE ORDER.

7 Signature: \_\_\_\_\_

8 Date: \_\_\_\_\_

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